

**CHAPTER 49-16**  
**LIABILITY OF RAILROADS FOR NEGLIGENCE**

§ 3. **49-16-01. Liability of railroad for damages from fire.** Repealed by S.L. 1977, ch. 443,

**49-16-01.1. Indemnity terms void and unenforceable.**

1. Except as provided in this section, any provision of a lease, license, or other agreement for the use or occupancy of railroad right of way, or other adjoining property, between a railroad or its representative and a state or federal licensed public grain warehouse or potato warehouse is void to the extent it does any of the following:
  - a. Purports to indemnify or require the defense of the railroad, or its employees, agents, or independent contractors against any loss, liability, or other damage to the extent caused by the sole or concurrent fault of the railroad or its employees, agents, or independent contractors arising out of any claims or actions for bodily injury, death, property damage, or environmental damage or liability.
  - b. Requires the state or federal licensed public grain warehouse or potato warehouse to purchase insurance providing coverage for the railroad or its employees, agents, or independent contractors against any loss, liability, or other damage to the extent caused by the sole or concurrent fault of the railroad or its employees, agents, or independent contractors.
  - c. Purports to exempt, or otherwise excuse, the railroad from any fault or other responsibility for bodily injury, death, property damage other than property damage subject to Public Law No. 104-88 [109 Stat. 847; 49 U.S.C. 11706], or environmental damage or liability to the extent caused by sole or concurrent acts of the railroad or its employees, agents, or independent contractors, or for any environmental damage or condition which exists at the time the lease, license, or other agreement is entered.
2. As used in this section, "fault" is defined under section 32-03.2-01.
3. Notwithstanding any other provision of law, a railroad may require that a state or federal licensed public grain warehouse or potato warehouse contracting for the use or occupancy of railroad right of way, or other adjoining property, provide the following:
  - a. Commercial general liability insurance of not more than two million dollars per occurrence and not more than four million dollars for multiple occurrences coverage for bodily injury, death, and property damage arising out of the use or occupancy of the property by the contracting party, including damage caused by the sole or concurrent fault of the railroad, its employees, agents, and contractors, and an endorsement naming the railroad as an additional insured.
  - b. Indemnification and defense of the railroad, its employees and agents for all bodily injury, death, environmental damage, and property damage claims and liability up to two million dollars per occurrence arising out of the use or occupancy of the property, including claims and liability caused by the sole or concurrent fault of the railroad, its employees, agents, and contractors.
  - c. Indemnification and defense of the railroad, its employees and agents for all bodily injury, death, property damage, and environmental damage suffered by the lessee, licensee, or other contracting party, its employees, agents, and

invitees, arising from the use or occupancy of the property, including claims and liability caused by the sole or concurrent fault of the railroad, its employees, agents, and contractors unless caused solely by the acts or omission of the railroad that are willful, wanton, or grossly negligent.

- d. Pollution legal liability insurance up to one million dollars, unless the lessee agrees to a greater amount, to cover liabilities arising from hazardous substances or bulk storage of petroleum products brought on the property, or released on or near the property, or violations of environmental laws, by the lessee, licensee, or other contracting party, its employees, agents, and invitees.
4. Each party to the agreement is responsible for all liability resulting from the environmental condition of the property to the extent caused, aggravated, or contributed to by that party, its employees, agents, and invitees.

**49-16-01.2. Choice-of-laws clause void.** To the extent a provision of any lease, license, or other agreement relating to the use or occupancy of railroad right of way or other adjoining property provides the indemnification provisions of section 49-16-01.1 do not apply, or another provision applies, the provision is void.

**49-16-02. Railroad's liability for injury or death of employee.** Every railroad corporation, while engaged in commerce to which the regulative powers of the state extend, shall be liable in damages to any person suffering injury while that person is employed by such railroad corporation in such commerce, or in case of the death of such employee, to that employee's personal representative for the benefit of the surviving widow, husband, or children of that employee, and if none, then for the next of kin dependent upon that employee, if such injury or death results in whole or in part from the negligence of any officer, agent, or employee of such railroad corporation, or by reason of any defect or insufficiency due to its negligence in any of its cars, engines, appliances, machinery, track, roadbed, works, or other equipment.

**49-16-03. Contributory negligence not bar to recovery.** In all actions brought against a railroad corporation under or by virtue of any of the provisions of this chapter to recover damages for personal injuries to, or the death of, any employee, the fact that the employee had been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributed to such employee. No such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such railroad corporation of any state or federal statute, enacted for the safety of employees, contributed to the injury or death of such employee.

**49-16-04. Assumption of risk.** In any action brought against any railroad corporation under or by virtue of any of the provisions of this chapter to recover damages for injuries to, or death of, any of its employees, such employee shall not be held to have assumed the risk of the employee's employment in any case where the violation by such railroad corporation of any state or federal statute enacted for the safety of employees contributed to the injury or death of such employee.

**49-16-05. Contracts exempting railroad from liability void.** Any contract, rule, regulation, or device with the purpose or intent of enabling any railroad to exempt that railroad from any liability created by sections 49-16-01.1, 49-16-02, 49-16-03, 49-16-04, 49-16-05, and 49-16-08 to that extent is void. In any action brought against the railroad under or by virtue of any of the provisions of this chapter, the railroad may set off in that action any sum it has contributed or paid to any insurance relief benefit or indemnity that may have been paid to the injured employee or to the person entitled to the payment on account of the injury or death for which the action was brought.

**49-16-06. Limitation of actions.** Repealed by S.L. 1977, ch. 443, § 3.

**49-16-07. Survival of right of action.** Repealed by S.L. 1977, ch. 443, § 3.

**49-16-08. Defenses of assumption of risk and contributory negligence barred.** Any employee of a railroad corporation who, while in the performance of the employee's duty and while engaged in any commerce subject to the regulative power of this title, may be injured or killed by any locomotive, car, structure, or obstruction used or retained contrary to the provisions of this title, shall not be deemed to have assumed the risk thereby occasioned or to have been guilty of contributory negligence, although the employee continued in the employ of such railroad corporation after the unlawful use of such locomotive, car, permanent overhead structure, or obstruction shall have been brought to the employee's knowledge. Notwithstanding the permission granted in this title to railroads to construct station or freight house platforms four feet [1.22 meters] high measured from the top of the track rail and near to the centerline of the track, any such structure shall be at the sole risk of the railroad corporation.

**49-16-09. Personal injuries - When railroad not liable.** Repealed by S.L. 1977, ch. 443, § 3.

**49-16-10. Liability for acts of railway police.** Repealed by S.L. 1977, ch. 443, § 3.

**49-16-11. Liability of owner or operator of railroad limited.** Repealed by S.L. 1997, ch. 284, § 8.